A

REPORT

OF THE

CASE OF THE LOUIS,

FOREST, MASTER;

APPEALED FROM

THE VICE-ADMIRALTY COURT AT SIERRA LEONE,

AND DETERMINED IN THE

HIGH COURT OF ADMIRALTY;

On the 15th of December 1817.

WITH AN APPENDIX.

By JOHN DODSON, LL. D. ADVOCATE.

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1817.

A. Strahan,
-Street, London.

Judge of the High Court of Admiralty—The Right Honourable Sir WILLIAM SCOTT.

FOR THE RESPONDENT,

The King's Advocate,
Dr. ADAMS,
} Counsel.

The King's Proctor.

FOR THE APPELLANT,

Dr. LUSHINGTON,
Dr. DODSON,
} Counsel.

Mr. TEBBS, Proctor.

REPORT

OF

A CASE

ARGUED AND DETERMINED IN THE

HIGH COURT OF ADMIRALTY,

&c. &c. &c.

LE LOUIS, FOREST.

THIS was the caſe of a *French* veſſel which ſailed from *Martinique* on the 30th of *January* 1816, deſtined on a Voyage to the Coaſt of *Africa* and back, and was captured ten or twelve leagues to the ſouthward of *Cape Meſurada*, by the *Queen Charlotte* cutter, on the 11th of *March* in the ſame Year, and carried to *Sierra Leone*. She was proceeded againſt in the Vice-Admiralty Court of that colony, and the information pleaded—1ſt, That the ſeizors were duly and legally commiſſioned to make captures and ſeizures. 2d, That the ſeizure was within the juriſdiction of the Court. 3d, That the veſſel belonged to *French* ſubjects or others, and was fitted out, manned, and navigated for the purpoſe of carrying on the *African* Slave-trade, after that trade had been aboliſhed by the internal laws of *France*, and by the treaty between *Great Britain* and *France*.

4th, That the veſſel had bargained for twelve ſlaves at *Meſurada*, and was prevented by the capture alone from taking them on board. 5th, That the brig being engaged in the Slave-trade, contrary to the laws of *France*, and the law of nations, was liable to condemnation, and could derive no protection from the *French* or any other flag. 6th, That the crew of the brig reſiſted the *Queen Charlotte*, and piratically killed eight of her crew, and wounded twelve others. 7th, That the veſſel being engaged in this illegal traffic, reſiſted the King's duly commiſſioned cruiſers, and did not allow of ſearch until overpowered by numbers. And 8th, That by reaſon of the circumſtances ſtated, the veſſel was out of the protection of any law, and liable to condemnation. The ſhip was condemned to His Majeſty in the Vice-Admiralty Court at *Sierra Leone*, and from this deciſion an appeal was made to this Court.

For the Reſpondent the King's Advocate and Adams contended, that the ſtipulation in the additional article of the treaty between *Great Britain* and *France*, of the 20th of *November* 1815, carried with it a legal preſumption that the Slave-trade had been aboliſhed by the laws of *France* prior to that period; and that the official declaration of M. *de Talleyrand*, dated on the 30th of *July* in the ſame year, carried back the preſumption ſtill farther. They admitted that an *Intention* only on the part of the *French* Government to aboliſh the traffic would not be ſufficient, and that there muſt be ſome *legal Act* for that purpoſe; but they argued that

pp. (N.)

pp. (1.)

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the Treaty itſelf was evidence that ſuch an act had really taken place. That if not a proof concluſive in law, it was at leaſt ſufficient to throw the *onus probandi* moſt ſtrongly on the adverſe party, and impoſed upon them the neceſſity of ſhewing that, by the laws of *France*, the Slave-trade was allowed at the time of capture: the legal preſumption was, that the treaty had been duly performed, and it was for the oppoſite party to rebut the preſumption. They then cited the caſe of the *Amedie*, in which it is laid down generally by the Superior Court, that the Slave-trade is *primâ facie* illegal; and that the burthen of proof is on the claimants, to ſhow that the laws of their own country permit ſuch a traffic. 1 Dodſon, 8. in Note.

The evidence, however, they contended, contained explicit proof that the treaty had actually been carried into effect; and in ſupport of this, they again referred to the official declaration of the *French* Miniſter, ſtating that *Directions had been given* for the abolition of the trade. This, they ſaid, was a declaration *not of an intention to aboliſh, but of the abolition itſelf, — of an act done and paſt.* This was ſtill further confirmed by a ſubſequent Act; viz. the ordonnance of the *French* King in *January* 1817, which inflicted particular penalties on perſons engaging in the Slave-trade. It was no juſt inference that becauſe additional penalties were impoſed upon the continuance of the trade, there was therefore no previous abolition of it; for prohibitions of particular practices were often enacted in the firſt inſtance, and afterwards additional penalties impoſed, as in many of our own acts of Parliament. App. (I.) App. (R.)

There was, therefore, the fulleſt and moſt complete evidence of the abolition; and that this was the ſtate of the law, was confirmed by the conduct of the parties themſelves. The Maſter admitted that he had heard that the Slave-trade had been prohibited by the laws of *France*: there was no direct authority from the governor of the colony, authorizing or recognizing the trade; and the ſhip's papers manifeſted a ſtudious concealment that ſhe was at all engaged in it. The conduct of the parties was in itſelf an acknowledgement of their ſenſe of the illegality of the trade; of their conſciouſneſs that they were offending againſt the laws of their own country.

Adverting to the character of the veſſel, they admitted that ſhe was *French*; having a regiſter as ſuch, and bearing the *French* flag. But ſhe had likewiſe *Britiſh* colours on board, and had recently been the property of *Britiſh* ſubjects; and therefore there was, on the moſt limited grounds, a ſpecial juſtification to perſons under *Britiſh* authority to examine into her national character. It was not, from a mere idle curioſity that this examination was reſorted to; for it was expreſsly certified that the veſſel had been *Britiſh*, and there was nothing but the mere aſſumption of flag to diſtinguiſh her as having acquired another character.

With reſpect to the employment of the veſſel, they contended that there was poſitive proof, in the evidence of two of the witneſſes, that the veſſel was actually about to take twelve ſlaves on board at *Meſurada*; that the act certainly had not been completed, neither was the conſummation of it neceſſary to render the

the property liable to confiſcation, for the Court had already laid it down that, in caſes of this kind, it made no difference in what ſtage of the employment the ſhip was taken, "whether in the inception, or the "profecution, or the conſummation of it." 1 Dodſon, 8(

They then referred to the articles which were found on board this veſſel; the quantity of water and of proviſions, conſiſting principally of beans; the number of irons, of which there was no ſpecification in the manifeſt; and the platforms and decks of the veſſel; from all which they inferred that the trading in ſlaves was one of the principal objects of the voyage, and not an incidental and ſecondary purpoſe; but that the ſhip had been ſent mainly and primarily to engage in that particular trade.

The veſſel was taken to *Sierra Leone*, and the caſe brought before the Vice-Admiralty Court in that colony; a court conſtituted by patent, and poſſeſſing nearly the ſame authority as the High Court of Admiralty. In that court an information was exhibited; and the Judge, conſidering that the veſſel was engaged in a trade contrary to the general law of nations and to the particular laws of her own country, had very properly rejected the claim, and paſſed a ſentence of condemnation on the property. The juriſdiction of that Court they contended could not now be called in queſtion by the Claimant, ſince he both petitioned the Judge there to proceed, and has ſince regularly appealed againſt the ſentence, inſtead of acting on the aſſumption that it was a mere nullity. The appellant, therefore, having recogniſed and voluntarily ſubmitted to the juriſdiction cannot now be heard to queſtion it.

On theſe facts, and on the authority of former caſes, they contended that the claimant had precluded himſelf from claiming reſtitution of his property. The objection that ariſes is that familiarly known under the title of *Turpis Cauſa*. Courts of Juſtice are bound not to protect or encourage *Crimes*; and to take care that they do not render themſelves accomplices of wrong-doers. This was the principle acted upon in the caſe of the *Amedie* in the Prize Court; and in the *Diana* the ſame ground of excluſion was deemed proper to be applied in this Court; for the Court there ſaid, "The general injuſtice of a claim "may be the ſubject of cognizance in a municipal "Court. A claim founded on piracy, or any other "act, which, in the general eſtimation of mankind, is "held to be illegal and immoral, might, I preſume, "be rejected in any Court on that ground alone." This Court, in acting on the general principles adopted in other Courts, has held, that parties are debarred from claiming reſtitution by the circumſtance of their becoming alien enemies; and there ſeems to be no ground of diſtinction why they ſhould not alſo be debarred by an offence of this kind, which has been adjudged to have that effect in the Prize Court. It is a common expreſſion, that parties are to come into Court with clean hands; but here they come into Court with hands ſtained with blood, with the guilt of murder voluntarily incurred, in the proſecution of another act in itſelf ſcarcely leſs criminal.

Dodſon, 84. ——— 100.

They admitted that the Courts of one country are not authorized to take cognizance of breaches of the mere municipal law of another, but contended that the preſent was a caſe of a very different deſcription;

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for here the Court proceeds on the breach of a *general law*, and only adverts to the law of the particular country to ſee whether it affords any protection to the offender. It is moſt reaſonable that the Slave-dealers ſhould be reſtrained by foreign cruizers, as well as by thoſe of their own country, otherwiſe an abolition in which all the great Powers of *Europe* have joined might be rendered perfectly illuſory by the act of the pettieſt State in the world; and peace in *Europe* would only be the ſignal for war in *Africa*.

Dr. *Luſhington*, for the appellant, denied the 1ſt, 6th, and 7th poſitions aſſumed in the information, and contended, that, in time of peace, on the high and open ſeas, where *Great Britain* does not lay claim to any peculiar juriſdiction, there exiſts no right of ſearching the ſhips of other nations. The capture in queſtion was made 10 or 12 leagues to the ſouthward of *Cape Meſurada*, and at the diſtance of at leaſt 120 miles from the peninſula of *Sierra Leone*, which is bounded on the north by the river *Sierra*, on the ſouth by the river *Caramancai*, on the eaſt by the river *Bunie*, and on the weſt by the ocean. The place of capture was therefore as much removed from the local juriſdiction of *Great Britain* as the middle of the *Atlantic* or *Baltic*. It was pleaded, that the *Queen Charlotte*, the captor, was entitled to ſeize veſſels employed in the Slave-trade, being duly commiſſioned; but the learned Gentleman denied the fact, that ſhe had any commiſſion for that purpoſe, or that any ſuch commiſſion could iſſue by the general law of nations, without ſome expreſs convention for

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the purpoſe. The claim then amounted to this, that there exiſted a right of ſearch during peace. If ſuch a right exiſted at all, it muſt be founded on public law, or upon expreſs treaty. If upon public law, the right muſt be ſhown neceſſarily to ariſe from ſome principle admitting of no diſpute. Now, where was this principle to be found? there was an entire abſence of all authority in the writers on public law, and no inſtance could be ſhown of the exerciſe of ſuch a right from time immemorial: this was concluſive proof againſt its exiſtence; and there was not even a claim advanced on behalf of *Great Britain* or any other country. If the right were claimed by virtue of a convention, that convention muſt be ſhown. The *French* nation might, if they pleaſed, concede to *Great Britain* the right of ſearching their ſhips any where, but ſo important a right could not exiſt by implication. It was a right ſcarcely conſiſtent with the independence of that country, and could not be claimed but in virtue of expreſs agreement. Even if it ſhould be expreſsly ſtipulated in a treaty between *Great Britain* and *France*, that *France* would no longer permit this trade to its ſubjects, no right of ſeizure and confiſcation would thereby ariſe to the *Britiſh* nation. Where the conditions of a treaty were violated, the law of nations directed the mode which ſhould be purſued in order to obtain redreſs, without immediately reſorting to force and bloodſhed. The firſt ſtep was application to the Government of the offending party, and it was not until after a denial of juſtice that recourſe could be had to violence to obtain reparation. It was ſo, not only

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where an injury had been received contrary to the general laws of nations, but even in caſes expreſsly provided for by treaty. *Great Britain* had already ſtrenuouſly maintained this principle. When in 1789 certain *Britiſh* ſhips were ſeized for illegally trading contrary to the treaties between *Great Britain* and *Spain*, *Great Britain* would not even enter into the queſtion of right until an apology was made for the act of violence committed, and full reparation made to thoſe who had been injured. In the late treaty with the *United States* there were certain ſtipulations as to the fiſheries; but it could not be maintained that either nation ſhould ſupport its rights by capture on the high ſeas. If then this were the true doctrine, even where the offence has been committed againſt the party ſeeking redreſs by violence; *à fortiori*, was it where the offence was committed againſt third parties, with whom we have no alliance or treaty? It was impoſſible that ſo ſtrong a right could exiſt to redreſs the injuries of others as there might be to avenge our own. The right of granting repriſals, which thoſe violent acts in effect were, did not exiſt where the acts were done towards third parties. But the cleareſt and ſtrongeſt argument againſt the exiſtence of this right of ſearch and confiſcation in time of peace aroſe from a conſideration of the extent to which, if admitted at all, it muſt neceſſarily go, and the conſequences which might and would reſult from it. If *Britiſh* ſhips had a right to examine *French* ſhips on the high ſeas, on the ſuſpicion of their being engaged in this trade, they might ſtop, detain, and bring in every *French* ſhip leaving a *French*

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port. The right of ſearch would extend over all the ocean; and *vice verſa*, the whole mercantile navy of *Great Britain* would be ſubjected every where to the ſearch of *France*, *Denmark*, *Sweden*, and *Holland*; and then how were ſuch caſes to be adjudicated? If *Great Britain* was not prepared to ſubmit to this degradation, ſhe had no right to inflict it on others. The conſequences of reſorting to it upon this occaſion had been bloodſhed and murder; nine lives had been loſt, and 15 of the crew wounded; and theſe conſequences muſt inevitably follow wherever violence was reſorted to. It was plain, then, that no right of ſearch exiſted, not even though *France* might have ſtipulated with *Great Britain* that ſhe would not allow her ſubjects to carry on the Slave-trade. If any right of ſearch were neceſſary for the ſuppreſſion of the trade, it muſt be arranged by convention between the contracting parties. It could not originate in the act of one alone; it muſt be under limitations and conditions as to time, place, and circumſtances; and the preſent lawleſs attempts at extirpating it by violence, could have no other effect than that of irritating foreign nations, and protracting the period of its utter extinction. If, then, there exiſted no right of ſearch and detention, all that had been done was mere lawleſs violence; unjuſt *ab initio*, and a violation of the law of nations. The ſeizors were the aggreſſors, and had committed an act of piracy.

He then proceeded to argue, that it was not poſſible to contend that the Slave-trade was piracy, or that thoſe who engaged in it might be deſtroyed at the pleaſure of any nation which has.

has aboliſhed it, even though ſo engaged againſt the internal regulations of their own Government. It was not piracy either by the law of nations, or the law of *Great Britain*. It was not by the law of nations, becauſe to make it ſo, it muſt either have been ſo conſidered and treated in practice by all the civilized States in *Europe*, or made ſo by virtue of a general convention; whereas, on the contrary, it had been carried on by all nations, even by *Great Britain* herſelf, until within a few years, and was at this moment carried on by *Spain* and *Portugal*, and not even at the preſent hour prohibited altogether by *France*. If it were piracy, *Spain* and *Portugal* could not carry it on; for pirates might be ſeized, be they of what nation they may, but the Slave-trade was entirely different from piracy. All nations had a right to ſeize pirates, becauſe they were general robbers, *hoſtes humani generis*; their violence was not confined to one nation, but was univerſal; and the general law of ſelf-preſervation gave a right to all to ſeize perſons ſo conducting themſelves. But in the Slave-trade it was quite different. The acts of injuſtice were confined to one deſcription of perſons with whom other nations had no concern; and there was no poſſibility of the ſame acts being practiſed againſt *Great Britain*. The Slave-trade might reſemble the conduct of the *Algerines*; they plunder and enſlave other nations without a cauſe; but this country had never conſidered them as liable to general detention, nor attempted to viſit upon them their outrages againſt others, ſo long as they abſtained from attacking *Britiſh* ſubjects. The

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Slave-trade could not be conſidered by *Great Britain* as piratical when committed by foreigners, becauſe it was not piracy by the laws of this country. Piracy was a defined crime, and there had been laws exiſting againſt it for centuries; but neither before nor ſince the abolition had any individual been proſecuted under thoſe laws. An act had been paſſed in 1811, to make the Slave-trade a criminal offence puniſhable by tranſportation, all which clearly demonſtrated that piracy it was not. But even if it were piracy, the property belonging to pirates, not taken *piraticè*, was not confiſcable by an act of piracy until conviction; for until conviction even pirates might diſpoſe of their own property. Here there was no property belonging to third parties—no ſlaves; neither was there any proceeding according to law; for piracy muſt be tried according to the ſtatutes, in a very different form. If, then, there was no right of ſearch, the reſiſtance was lawful, and no penalty could ariſe from it under any law whatſoever.

G. 3. c. 23.

He then proceeded to deny that the capture had been made within the juriſdiction of the Court of *Sierra Leone*; and contended that that Court had no juriſdiction whatever. It had no juriſdiction *ratione loci*, becauſe the ſeizure was made out of the limits within which its ordinary juriſdiction was confined: none, becauſe of the ſubject matter, for that was not triable by any municipal Court whatſoever: none, by reaſon of any act of Parliament, for there was none ſuch, and if there were, it could not be binding on foreigners. There was not one word in the warrant for appointing

ing this Court, or in the patent, whence a ſhadow of juriſdiction could be drawn; the prize commiſſion was at an end by the termination of the war; and although ſome of the forms obſerved in the preſent proceeding were prize, yet the ſhip was proſecuted as a forfeiture. The want of juriſdiction was, therefore, manifeſt on the face of the proceedings; they were all groſsly irregular and unjuſt—all *coram non judice*. In the firſt inſtance, the witneſſes were examined on prize interrogatories, then croſs-examined *vivâ voce*; next an information was filed, then a monition iſſued, and then the witneſſes were examined again on freſh interrogatories; the proceeding was, therefore, neither according to the law of nations, nor to the civil law, nor to the common law; the party proceeded againſt had no legal means of defence; and was therefore entitled to have the ſentence annulled with coſts and damages, according to the precedent of the *Fabius*. 2 Robinſon

He then adverted to the poſition that the veſſel belonged to *French* ſubjects or others, and was fitted out for the purpoſe of carrying on the Slave-trade, after it had been aboliſhed by the internal laws of *France*, and by the treaty between this country and *France*; and was therefore condemnable. That the property belonged to *French* ſubjects, he obſerved, was fully admitted: a poſſeſſory right was quite a ſufficient proof of property in a municipal court, but here there was other proof. The ſhip belonged to *Teychoire* and *De Chaptè*; ſo alſo the cargo, except that the maſter had an intereſt to the extent of 8,000 dollars. There was the *French*

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regiſter on board, in the name of *Teychoire*; the paſſport; and the clearance from the cuſtom-houſe at *Martinique*. There was alſo the evidence of the maſter in preparatory, and of all the other witneſſes, as to *De Chapté* being the owner; and there was nothing to contradict this teſtimony, or to ſhow that the property belonged otherwiſe; no averment even of the property being *Britiſh*. With reſpect to the veſſel being fitted out for carrying on the Slave-trade, he did not mean to deny that ſhe was adapted for that purpoſe; but there was no evidence to ſhow that that was the certain object of the voyage; and, adverting to the evidence, he contended that the Slave-trade was a contingent object of the voyage, and no more.

He then proceeded to contend, that the trade was not aboliſhed by the internal laws of *France*, though by treaty it was agreed that it ſhould be ſo. *Buonaparte*, during his ſhort poſſeſſion of the government after
p. (G.) his return from *Elba*, aboliſhed the Slave-trade, and referred the puniſhment of any violation of his decree to the *French* tribunals.

p. (H.) On the 27th *July* 1815, Lord *Caſtlereagh* wrote to M. *de Talleyrand*, urging that the Slave-trade ſhould not be revived, and queſtioning whether by the law of *France* it had not been aboliſhed. *Talleyrand* in reply, by letter dated *July* 30th, 1815, ſtated, that the
p. (I.) edict of *Buonaparte* was a nullity, but that the King had iſſued directions for the traffic to ceaſe from the preſent time every where and for ever. By the additional article to the Definitive Treaty, dated *No-*
p. (N.) *vember* 20th, 1815, it was recited that *France* had abo-

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liſhed the Slave-trade, and that ſhe would with *Great Britain* concert meaſures for its entire abolition by all nations.

On the 15th of *January* 1817, Sir *Charles Stuart* wrote, and requeſted a copy of all orders, &c. relating to the abolition of the *French* Slave-trade; and on the 27th of *January* 1817, he received an anſwer, enclоſing an ordinance dated the 8th of *January* 1817. It was therefore quite clear, that, up to *January* 1817, there was no public ordinance of the *French* King prohibiting this trade; for if there had, Sir *Charles Stuart* muſt have known it, nor any ordinance at all; for if there had, Sir *Charles Stuart*'s note muſt have called it forth; and the *French* government muſt have been anxious to produce it as a proof of their good faith. In the note, it was ſpoken of as *the* ordinance, which negatived the exiſtence of any preceding ordinance. There could be no doubt, therefore, that the trade had not previouſly been aboliſhed by any decree whatſoever. The ordinance itſelf did not aboliſh it totally, but merely aboliſhed the introduction of ſlaves into the *French* colonies; and then it reſerved to the *French* tribunals the right of adjudging the caſes by their own law. The caſe then came to this—that the Slave-trade was not aboliſhed by *Buonaparte*'s decree after the reſtoration of the King; that the *Britiſh* government had not been able to extract any ordinance prior to *January* 1817; that none did exiſt; and therefore that a ſlave adventure was lawful prior to 1817, and was ſo ſtill *ſub modo*, and triable only in *France*; and all preſumption in favour of the exiſtence of orders in conformity

App. (P.)

App. (Q.)

App. (R.)

to

to ſtipulations was done away by the letter of Sir *Charles Stuart* and its anſwer. With reſpect to the point that the veſſel had bargained for twelve ſlaves, and would have taken them on board if not prevented by the capture, the learned Gentleman contended that that fact was not ſufficiently proved; he objected to the legality of ſome of the depoſitions, and argued that the fact was negatived in others; that it was quite improbable that twelve ſlaves ſhould be taken on board to ſuperintend others; and that the veſſel not having been taken *in delicto*, no offence was conſummated, nor was there any offence againſt the laws of *France*. Upon all theſe conſiderations, he ſubmitted, that the deciſion of the Court below muſt be reverſed, and the ſhip reſtored with coſts and damages.

Dodſon, on the ſame ſide, contended, that the ſhip had been illegally taken, becauſe the cruizer by which ſhe had been ſeized was not duly authorized to capture foreign veſſels. No commiſſion had been produced; and it was not very probable that there was any ſuch
23. in exiſtence; ſince the ſtatute enabling Governors of colonies to authorize perſons to ſeize and proſecute ſhips engaged in the Slave-trade was the law of this country alone, and was ſtrictly confined to *Britiſh* ſubjects, or to perſons reſident within *Britiſh* dominions.

He then laid it down as a primary and fundamental rule of the Law of Nations, that *the right to viſit and ſearch foreign ſhips on the open ſea does not exiſt in time of peace*; and this poſition he proceeded

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to eſtabliſh upon the three grounds of *reaſon*, *authority*, and *practice*.

During the exiſtence of war neutral veſſels might be engaged in the conveyance of enemy's property, or of articles contraband of war, calculated to ſtrengthen the military reſources of the enemy. The duty of ſelf-protection gave all belligerent States a right to ſecure themſelves from the injurious effects of ſuch practices, and ſuch ſecurity could only be obtained by viſitation and ſearch. This therefore was a right founded on neceſſity, but by that neceſſity it was alſo to be ſtrictly limited. Now it was obvious that during peace no ſuch danger could exiſt; viſitation and ſearch was not required for any purpoſes of ſelf-protection, and conſequently the practice had no longer a juſt and lawful foundation. During peace no State was privileged to appropriate to itſelf the main ocean, or to interdict the free and uninterrupted uſe of it to the commercial marine of other countries. If *Great Britain* had a right to ſearch foreign ſhips, foreign ſhips would in their turn have a right to ſearch thoſe of *Great Britain*; for the rights of all countries muſt in this reſpect be equal. *Great Britain* had no excluſive rights upon the ocean; none which did not equally belong to all other nations. The *Empire of the Seas*, in the modern acceptation of the term, does not imply any excluſive legal privileges; and the only meaning that can juſtly be aſſigned to it is, that in time of war the nation poſſeſſing it has a perfect maſtery over the fleets of the enemy, and can ſecure to itſelf all the important advantages ariſing from ſuch a ſuperiority; but in time of peace it conferred

no peculiar privilege. If the right of viſitation and ſearch belonged to *Great Britain*, it muſt equally belong to *France*, and to all other nations. They muſt all, even the pettieſt State, have the liberty of ſtopping every where (for if any where, then every where) *Britiſh* veſſels; and how could *Great Britain* endure this? If then ſhe was not prepared to ſubmit to ſuch treatment from others towards herſelf, ſhe muſt forbear to exact the like ſubmiſſion from them; for it was with nations as with individuals, they muſt learn not to do to others what they would not ſuffer to be done to themſelves. It had been aſked, whether peace in *Europe* was to become the ſignal for war in *Africa?* and aſſerted that it muſt become ſo, if ſlave-traders were to be reſtrained only by the cruiſers of their own nation; but what courſe of conduct was ſo likely to lead to war and violence, as that of endeavouring to enforce the claim of viſitation and ſearch againſt the veſſels of foreign and independent States? The conſequences muſt naturally and neceſſarily be what they had been in the preſent inſtance, the loſs of lives and the deſtruction of property; and it was impoſſible to foreſee to what an extent theſe conſequences might go, or what miſchiefs might not be produced by them. If there exiſted a right to bring in any one ſhip, then there muſt be the ſame right to bring in all, and at all times; independent nations would be irritated, and wars and tumult would be produced and perpetuated throughout the world.

With reſpect to the *authorities* upon which the right of viſitation and ſearch would require to be ſupported, he obſerved, that ſuch a right in time

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of peace had never been aſſerted by any writer on the law of nations. None of them went further than to aſſert that a *belligerent* might lawfully ſearch foreign ſhips, and their ſilence on the ſubject of this right, during peace, was almoſt concluſive againſt its exiſtence. On the other hand, numerous paſſages are to be found in writers of the greateſt celebrity, from which the contrary doctrine is fairly to be inferred. The right of navigating the ocean freely, and without moleſtation, is aſſerted every where, in every page of the beſt authors, ſuch as *Grotius*, *Wellwood*, *Vattel*, *Vaſquius*, *&c.* quotations almoſt innumerable might be made to this effect, but the principle was ſo clear that it was ſcarcely neceſſary, or indeed proper, to trouble the Court with authorities in ſupport of it.

Adverting to the *practice* of nations as ſanctioning or diſavowing the right in queſtion, he obſerved, that the *Portugueſe*, at the time of their great power in the *Eaſt Indies*, wiſhed to exclude all other *European* nations from any commerce with that portion of the globe, and claimed the right of ſtopping ſhips engaged in ſuch commerce. This, which *Vattel* calls "a pretenſion no leſs iniquitous than chimerical," was made a jeſt of by the nations whoſe commerce was interdicted, and they agreed to look upon any acts of violence committed in ſupport of it, as juſt cauſes of war. The anſwer of Queen *Elizabeth* (anno 1582) to the *Spaniſh* ambaſſador upon a ſimilar occaſion, was expreſs upon this point; ſhe ſtated broadly "that her ſubjects had a right "freely to navigate the vaſt ocean, ſince the uſe of

B. 2. ch. 2. ſ. 24.

Vide Camden

" the air and of the ſea was common to all." In 1737, *Spain* again claimed the right of ſearching *Britiſh* ſhips in the *American* ſeas; but this aſſerted right was again expreſsly denied by *Great Britain*, and the conduct of *Spain*, in this reſpect, was termed by Mr. *Pitt* (afterwards Lord *Chatham*) " an uſurpation, an inhuman " tyranny claimed and exerciſed over the *American* " ſeas." It occaſioned a general indignation throughout the kingdom, and an inſtant demand for redreſs. *Spain*, in conſequence of the remonſtrances addreſſed to its Government, ſtipulated to make good the loſſes ſuſtained by *Britiſh* ſubjects, which ſtipulation implies an admiſſion that ſhe had done wrong. On non-payment of the remuneration agreed upon, orders for repriſals were iſſued by *Great Britain*, and theſe were followed by the war which terminated in the peace of *Aix-la-Chapelle* in 1748. In confirmation of this ſtatement he read ſeveral extracts from the addreſſes of the Lords and Commons, His Majeſty's anſwers, and other official documents. He then referred to the caſe of the *Britiſh* ſhips captured at *Nootka Sound* in 1789, which he obſerved was nearly ſimilar. There, a demand was immediately made by *Great Britain* for adequate ſatisfaction, and the reſtitution of the captured veſſels, accompanied by a refuſal to enter upon any diſcuſſion whatever until that demand had been complied with. A ſimilar claim, lately made on the part of *Sweden*, had been ſtrenuouſly and ſucceſsfully reſiſted by *Great Britain*.

Then if the right of ſearch does not exiſt under the general Law of Nations, is it founded on any *Treaty* between this country and *France* as applicable

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to the Slave-trade in particular? No.—*France* was aſked to make ſuch a Treaty, and gave a decided negative to the propoſal. This appears from the papers ſubmitted, in *April* 1815, by order of The Prince Regent to the Houſe of Commons, on the ſubject of the application of the *Britiſh* Government to that of *France*, for the abolition of the Slave-trade, and particularly from the letter of Lord *Caſtlereagh*, 6th *Auguſt* 1814, to the Duke of *Wellington*, and the conſequent correſpondence between his Grace and Prince *Talleyrand* and M. *de Jaucourt*. The Duke of *Wellington*, on communicating to Lord *Caſtlereagh* what had paſſed, ſtates, that the propoſal of a reciprocal right of ſearch in the *African* ſeas was ſo diſagreeable to the *French* Government and nation, "*that there was no chance of ſucceeding in getting it* "*adopted.*" Afterwards the matter was again taken up in the congreſs of *Vienna*, with a reſult quite as unſatisfactory; for in one of the conferences there held, the *French* Miniſter expreſsly declared that "*he* "*could admit no other maritime police than that which* "*every power exerciſed over its own veſſels.*" It is clear therefore that neither by the general Law of Nations, nor by a particular convention between the two States, does the right of viſitation and ſearch exiſt. Even if the two countries had reciprocally agreed to prohibit the Slave-trade and to permit the right of ſearch, a refuſal to abide by this agreement by the ſubjects of one of them, would not juſtify the other in immediately reſorting to the meaſure of capturing their ſhips. The firſt ſtep to be taken in caſe of breach of the treaty would be remonſtrance by the offended

App. (B.) &

App. (D.)

App. (E.)

party, and if that was diſregarded, then, but not before, repriſals might iſſue. This was the utmoſt that could be done by the Law of Nations, if it was our own intereſt that had been affected; *à fortiori* where the injury of which we had to complain was directed againſt the intereſts of a third party, namely, the natives of *Africa*.

It is charged in the information that this ſhip was taken within the juriſdiction of the Vice-Admiralty Court at *Sierra Leone*; but this is not made out in proof; on the contrary it appears, from all the evidence in the cauſe, that the capture was effected ten or twelve leagues to the ſouthward of *Cape Meſurada*, which is at a great diſtance from the limits of the colony, as ſettled by act of parliament. There is no pretence for ſaying that the original and ordinary commiſſion of the Judge would give him juriſdiction beyond thoſe limits, nor has there been any ſubſequent extenſion of the juriſdiction of that particular court. The act for the abolition of the Slave-trade gives no ſuch juriſdiction, at leaſt ſo far as the ſubjects of foreign States not engaged in hoſtilities with this country are concerned, for one part of it applies only to the property of *Britiſh* ſubjects, and to perſons reſident within *Britiſh* dominions, and the remaining part to ſlaves taken as prize during war. The only other ſtatute which extends the juriſdiction of Vice-Admiralty Courts was paſſed for the purpoſes of the Revenue Laws, and is expreſsly confined to Courts in *America*. The capture therefore was made neither within the limits of the colony nor the juriſdiction of the Court at *Sierra Leone*. The whole

G. 3. c. 55. 14.

G. 3. c. 36.

G. 3. c. 107.

whole tranſaction was *coram non judice*, and the proceedings altogether a nullity.

It has been ſaid, that the claimants come into Court with hands ſtained with blood; but that ſtain reſts on the captors who attacked, and not on the claimants who defended themſelves. As there exiſted no right of ſearch, all that the captors have done is lawleſs violence; they were the aggreſſors in violation of the Law of Nations, and all the evil that has followed muſt be attributed to them.

Then it is argued that the party being brought into Court, whether rightly or not, cannot receive reſtitution becauſe he is in *delicto*. If ſome Courts may act upon the principle of refuſing reſtitution on this ground, it is by no means clear that all Courts are poſſeſſed of the ſame power. It may be different in the Inſtance Court of Admiralty from what it is in the Prize Court. But what is the *delictum* here? In the information it is charged to be *piracy*; but it has been demonſtrated by Dr. *Luſhington*, not to come within any legal definition of that offence. Then it is ſaid, if not an offence againſt the Law of Nations, it is an offence againſt the internal laws of *France*; but are the municipal Courts of one country, armed with authority, to notice offences againſt the internal law of another country? How can the *French* law give juriſdiction to an *Engliſh* Court ſitting at *Sierra Leone?* Both the Decree of the Uſurper (which the preſent *French* Government holds to be null) and the Ordinance of the King, which purports to be dated on the 8th of *January* 1817, provide that offences by *French* ſubjects ſhall be tried in *French* Courts. They direct, likewiſe,

App. (G.)

App. (R.)

wiſe, the mode in which the penalties ſhall be applied; and how is it poſſible that a *Britiſh* Court ſitting at *Sierra Leone* can apply the forfeitures as directed by the *French* law?

Having in the next place noticed the irregularity with which the cauſe had been conducted in the Court below, he proceeded to contend, that no ſufficient proof had been produced that any *French* law prohibiting the Slave-trade was in force when the preſent
(R.) tranſaction commenced. The Ordinance of the 8th *January* 1817 being poſterior in point of date, could
(G.) have no bearing upon it. The Decree of the Uſurper was conſidered by the legitimate Government, then reſtored, to be null and void, and could therefore have
(N.) no operation. The Treaty of the 20th *November* 1815, though containing an aſſertion that the Slave-trade was aboliſhed in *France*, did not purport to be in itſelf a law forbidding *French* ſubjects to engage in the traffic; and even if that Treaty could be conſidered as amounting to a prohibitory law on the ſubject, it was not known at *Martinique* when the preſent voyage commenced, and conſequently was not binding on the ſubjects of the *French* Crown reſident within that part
(L) of its dominions. The Declaration contained in the *French* Miniſter's letter (30th *July* 1815), that the King of *France* had iſſued directions that the traffic in ſlaves ſhould ceaſe throughout his dominions, could not in itſelf be conſidered as concluſive evidence of the *French* law, much leſs as the law itſelf. *Non conſtat* what became of thoſe directions, or to whom they were addreſſed. Certainly it is not in proof, either that the directions themſelves, or any law or ordinance reſulting from them, have been duly promulgated within the

the *French* dominions. It is ſaid, however, that this aſſertion of the *French* Miniſter reſpecting the directions iſſued for the abolition of the traffic, coupled with the recital in the Treaty to the ſame effect, is at leaſt preſumptive evidence of the *French* law, and throws on the claimant the burthen of proving it to be otherwiſe; but the weight of this burthen is entirely removed by the production of the ordinance of the 8th *January* 1817, which, in anſwer to an application from the *Britiſh* Miniſter for ordinances, laws, &c. is produced as *the* ordinance, and which muſt therefore be conſidered as *the only law* which had been paſſed on this ſubject. If any previous laws or ordinances had been in exiſtence, they muſt have been produced when ſo demanded. It was clear, therefore, that no ſuch laws or ordinances had been paſſed by the *French* Government until after this tranſaction had taken place, and conſequently that no offence had been committed againſt the laws of *France*. App. (R.)

The King's Advocate and Adams in reply admitted the propoſition to be true *generally* that the right of viſitation and ſearch does not exiſt in time of peace, but denied it to be ſo *univerſally*. Occaſions, they ſaid, may and muſt ariſe at a period when no hoſtilities exiſt, in which an exerciſe of this power would be juſtifiable, and inſtanced the caſe of a foreign ſhip exporting goods from a *Britiſh* colony contrary to the proviſions of the Navigation Laws. A veſſel which has been guilty of ſo ſerious an offence againſt the laws of this country may be viſited at ſea by a *Britiſh* cruizer and brought before a *Britiſh* tribunal for legal adjudication. The rule of law, therefore,

which

which has been contended for on behalf of the Appellant, cannot be maintained as an univerſal propoſition, but is ſubject to exceptions, and within thoſe exceptions muſt be included the preſent tranſaction, which is a tranſgreſſion not only of municipal law but likewiſe of the general Law of Nations. That the property of parties ſo offending ſhould be liable to ſeizure and confiſcation is not a novel doctrine now for the firſt time attempted to be introduced into the code of the Law of Nations. Even at ſo diſtant a period of time as that in which the laws of *Oleron* were framed, it was permitted to ſeize the property of all perſons enemies to the Holy Catholic Faith in the ſame manner as that belonging to pirates. Piracy, therefore, was not, as has been contended, the ſole ground of ſeizure in time of peace. The enemies of the Holy Catholic Faith were in thoſe days not deemed within the pale of the Law of Nations, and therefore their property was liable to ſeizure wherever it might be found. In whatever light the Slave-trade may have been viewed in former times, it muſt no longer be deemed within the protection of the Law of Nations, eſpecially ſince the Declaration ſigned by the Miniſters of the different *European* Powers aſſembled in Congreſs at *Vienna*, that the trade was *repugnant to the principles of humanity and of univerſal morality*. From that period at leaſt, a traffic in ſlaves muſt be conſidered *a crime*, and it is the right and duty of every nation to prevent the commiſſion of crime. A party who becomes an alien enemy, though guilty of no perſonal turpitude, is debarred from demanding reſtitution of his property in a Court of Juſtice; *à fortiori*, therefore, ſhould a perſon who em-

Section 45.

barks

barks in a trade ſtigmatized as this has been, and denounced as a crime by authority of ſo high a nature. Upon the whole, they ſubmitted, that the veſſel having illegally reſiſted the viſitation and ſearch of thoſe who were duly authorized to enquire into her voyage and its objects, and having been engaged in a traffic prohibited by the laws of her own country, and contrary to the general laws of humanity and juſtice, ought not to be reſtored to the claimant.

After the argument had been cloſed, the commiſſion of the captor was brought in. It was granted by the Governor of *Sierra Leone* under the ſtatute, and authorized the captor to ſeize and proſecute ſhips, &c. liable to forfeiture for any offence committed againſt the ſaid act, or any other act of Parliament paſſed for the abolition of the Slave-trade, and found upon or near the coaſt of *Africa*, &c. or within the limits of any of the colonies, ſettlements, forts, or factories thereof. App. (S.) 51 G. 3. c. 2.

JUDGMENT.

Sir *William Scott*.—This ſhip was taken off *Cape Meſurada*, on the coaſt of *Africa*, on the 11th of *March* 1816, by an *Engliſh* colonial armed veſſel, after a ſevere engagement, which followed an attempt to eſcape.—The Court has found occaſion to lament, that the particulars of this melancholy tranſaction are not more circumſtantially brought to its notice; for in the maſs of matter with which theſe proceedings are clogged, (matter which can have no application whatever to any queſtion that could poſſibly be expected to ariſe in the caſe), no information is diſtinctly conveyed

veyed to the Court, what preliminaries led to this unfortunate conflict; in which no fewer than twelve lives were loſt on the *Britiſh* ſide, and three on the other, and in which ſeveral perſons on both ſides were wounded. The Court is left to infer from the general courſe of the tranſaction, that it originated in a demand to viſit and ſearch the veſſel, on a ſuſpicion of her being a ſlave-trader, and in a reſiſtance to that demand; the demand and the reſiſtance being maintained to the length of producing the calamitous event which I have deſcribed.

The ſhip ſeized was in appearance and in fact a *French* ſhip, admitted both in the plea and in the argument to be ſo *unqueſtionably*, owned and navigated by Frenchmen, originally indeed built in *America*, and having been for a ſhort time in *Britiſh* poſſeſſion, which had ceaſed. She is immediately proceeded againſt in the Vice-Admiralty Court at *Sierra Leone* (whither ſhe had been carried), as a *French* ſhip violating *French* law by the intention of purchaſing ſlaves for the purpoſe of carrying them to her port in *Martinique*. There are ſome words in the libel which certainly can have no conſiſtent meaning in the ſentence in which they ſtand, but which, if they have any meaning at all, ſeem to intimate vaguely and unintelligibly an ownerſhip ſomewhere elſe than in *French* ſubjects. Nothing, however, appears that at all excites a ſuſpicion, that ſhe is not, what ſhe is treated as being both by the parties and by the Court, a *French* ſhip. For the mere circumſtance of her having had *Engliſh* as well as other colours on board, cannot, in the known practice of merchant veſſels, excite any ſuch ſuſpicion. After the admiſſion which has been made,

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that ſhe had a contingent intention at leaſt of trading in ſlaves, as well as other commodities if a convenient opportunity ſhould offer, I feel it not requiſite to enter into the detail of the many circumſtances which compel that admiſſion. The number of iron manacles on board, the conſtruction of the platforms, the magnitude of the coppers, the quantity and quality of the proviſions in ſtore, the negociations with the natives at *Meſurada*, the myſterious paſſages which occur in the correſpondence between the owners, all tend one way, to ſhew a contingent, or rather a predominant intention ſo to trade; and this being admitted, the Court will not deem itſelf guilty of any injuſtice in holding that the legal queſtion is the ſame as if the intention were ſingle and abſolute; for I have little doubt but that the contingency would have happened, and the opportunity would have offered, and would have been uſed.

At *Sierra* proceedings were commenced, which led to the firſt condemnation of the ſhip and cargo. Much argument has been employed to controvert the juriſdiction of the Court upon the point of locality, which I do not think it neceſſary to examine for the determination of the preſent cauſe. I will ſuppoſe the juriſdiction to be duly founded, as far as the matter of locality is concerned, and conſider only whether the ſentence can be ſuſtained, giving the authority which pronounced it the benefit of a ſuppoſed indiſputable juriſdiction.

At the outſet of the proceedings the ſeizor deſcribes himſelf as commiſſioned to make *captures* and ſeizures. It certainly appeared to be a ſingular commiſſion that

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authorized him to make *captures* in time of peace; and it was therefore not an unnatural curioſity on the part of the Court to deſire to ſee it. The commiſſion, after repeated requiſitions, has been at laſt brought in, at a time extremely inconvenient for the purpoſe of any careful examination by the Court, if that were neceſſary. It may, however, be ſufficient to ſtate that this commiſſion profeſſes to be iſſued by the Governor of *Sierra Leone*, on the 25th of *January* 1816; to be founded on the Slave-trade act, 51 G. 3. and to authorize the commander to ſeize and detain (for I do not find that the word *capture* occurs) all ſhips and veſſels offending againſt that act, or any other act aboliſhing the Slave-trade; and after ſtating theſe facts to obſerve, that neither this *Britiſh* act of Parliament, nor any commiſſion founded on it, can affect any right or intereſt of foreigners, unleſs they are founded upon principles and impoſe regulations that are conſiſtent with the Law of Nations. That is the only law which *Great Britain* can apply to them; and the generality of any terms employed in an act of parliament muſt be narrowed in conſtruction by a religious adherence thereto.

Upon the courſe of the proceedings in the Court of *Sierra Leone*, after the manner in which they have have been adverted to in argument, I ſhould deſert my duty if I did not make ſome remark without meaning at all to depart from that tenderneſs which is uſually ſhewn to mere informalities in the practice of Vice-Admiralty Courts. I have no doubt but that the Gentleman under whoſe cognizance theſe proceedings paſſed, carried out with him, among many other

other laudable qualities, a proper zeal for the purpoſes of the eſtabliſhment of *Sierra Leone*; and I have as little doubt that he poſſeſſed a ſtill higher zeal for his own immediate and paramount duty, the correct and equal adminiſtration of juſtice to all parties, who might come before him. But it is impoſſible to deny that there occur in theſe proceedings incongruities, ariſing (as it ſhould ſeem) from inattention ſomewhere, not only to the common forms of law, but to the rational principles on which they are founded. What was the natural as well as legal courſe? Surely ſimple and obvious enough; for the proctor, after lodging in the regiſtry all the papers found on board, and citing by monition the party to appear, to give a libel (anſwering to the bill of indictment in criminal caſes) ſtating the facts imputed, and the law that is charged to be violated, and praying the examination of his witneſſes thereon, and the judgement of the Court upon the effect of the documents and teſtimony to be produced. The party charged has a right to give his claim, ſtating the facts by which he undertakes to diſcharge himſelf from all legal cenſure, and to produce his witneſſes thereon. Upon the reſult of the whole evidence ſo furniſhed, and of proper ſpecial interrogatories adminiſtered under the immediate authority of the Judge, the Court ſhould pronounce its judgment. What is done here? In the firſt place the prize interrogatories calculated for the tranſactions of war are, inſtantly on bringing in, applied to this tranſaction, which, however denominated a *capture*, and with whatever fatal violence accompanied, is in truth a tranſaction of peace. Then, ſpe-

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cial interrogatories are adminiſtered, *non conſtat* by what authority, ſome of them certainly not very fairly (at leaſt according to common notions) addreſſed to the perſons from whom the anſwers are to be extracted. It is in this late ſtage of the proceeding that the proſecutor brings forth his libel or charge, in which he tells the Judge (whoſe excluſive province it is to decide on the ſufficiency of the proofs,) that "the caſe is inconteſtably proved," both in law and in fact; the law alleged being, that the Slave-trade is prohibited both by treaty and by the internal law of *France*; and the facts charged being, that the party was trading in ſlaves, and reſiſted ſearch. In the ſame benevolent view of ſaving the Judge the entire trouble of performing his duty, the proſecutor informs him, that "there is *no doubt* of "the ſhip's being fitted out for the Slave-trade," and "that the evidence of the maſter is all evaſive;" and prays a commiſſion of inſpection, to aſcertain the fact of which he had juſt before told him that *no doubt whatever* exiſted, and the party is then cited by monition to appear, after the caſe has been thus *inconteſtably* proved againſt him; and then, without a ſingle witneſs examined upon the libel, without the ſmalleſt evidence produced of the foreign law, though upon all principles of common juriſprudence foreign law is always to be proved as a fact, the Judge, having properly reduced the ſix counts of the libel to two, pronounces the ſhip to be a *French* ſhip, employed illegally (that is, againſt the *French* law,) in the Slave-trade; ſecondly, that ſhe reſiſted by force the legal ſearch of the King's cruizers; and that on both

both accounts herſelf and cargo are to be confiſcated. There is, I think, conſiderable difficulty in vindicating the correctneſs of theſe proceedings, except upon the ſuppoſition, that perſons charged with a concern in ſo odious a traffic are inſtantly to have a *caput lupinum* placed upon their ſhoulders, and are not entitled, in the courſe of proceedings againſt them, to the ordinary forms and meaſures of juſtice. However, without preſſing further obſervation upon the proceedings which have led to the judgement, I haſten to the more important taſk of conſidering the propriety of the judgement itſelf; having juſt ſtated that the grounds are two—one, that this was a *French* ſhip, intentionally employed in the *African* Slave-trade; the other, that ſhe reſiſted by force the King of *England*'s commiſſioned cruizer.

Aſſuming the fact which is indiſtinctly proved, that there was a demand, and a reſiſtance producing the deplorable reſults here deſcribed, I think that the natural order of things compels me to inquire firſt, whether the party, who demanded, had a right to ſearch; for if not, then not only was the reſiſtance to it lawful, but likewiſe the very fact on which the other ground of condemnation reſts is totally removed. For if no right to viſit and ſearch, then no ulterior right of ſeizing, and bringing in, and proceeding to adjudication; and it is in the courſe of thoſe proceedings alone, that the facts are produced, that ſhe is a *French* ſhip trading in ſlaves; and if theſe facts are made known to the ſeizor by his own unwarranted acts, he cannot avail himſelf of diſcoveries thus unlawfully produced, nor take advantage of the conſe-

quences of his own wrong. Suppoſing, however, that it ſhould appear that he had a right to viſit and ſearch, and therefore to avail himſelf of all the information he ſo acquired, the queſtion would then be, whether that information has eſtabliſhed all the neceſſary facts?—The firſt is, that this was a *French* ſhip intentionally employed in the Slave-trade, which, I have already intimated, appears to be ſufficiently ſhewn. The ſecond is, that ſuch a trading is a contravention of the *French* law; for it has been repeatedly admitted that the Court, in order to ſupport this ſentence of condemnation, muſt have the foundation of the trade being prohibited by the law of the country to which the party belongs.

Upon the firſt queſtion, whether the right of ſearch exiſts in time of peace, I have to obſerve, that two principles of public law are generally recognized as fundamental. One is the perfect equality and entire independence of all diſtinct States. Relative magnitude creates no diſtinction of right; relative imbecility, whether permanent or caſual, gives no additional right to the more powerful neighbour; and any advantage ſeized upon that ground is mere uſurpation. This is the great foundation of public law, which it mainly concerns the peace of mankind, both in their politic and private capacities, to preſerve inviolate. The ſecond is, that all nations being equal, all have an equal right to the uninterrupted uſe of the unappropriated parts of the ocean for their navigation. In places where no local authority exiſts, where the ſubjects of all States meet upon a footing of entire equality and independence, no one

State, or any of its ſubjects, has a right to aſſume or exerciſe authority over the ſubjects of another. I can find no authority that gives the right of interruption to the navigation of States in amity upon the high ſeas, excepting that which the rights of war give to both belligerents againſt neutrals. This right, incommodious as its exerciſe may occaſionally be to thoſe who are ſubjected to it, has been fully eſtabliſhed, in the legal practice of nations, having for its foundation the neceſſities of ſelf-defence, in preventing the enemy from being ſupplied with the inſtruments of war, and from having his means of annoyance augmented by the advantages of maritime commerce. Againſt the property of his enemy each belligerent has the extreme rights of war. Againſt that of neutrals the friends of both, each has the right of viſitation and ſearch, and of purſuing an inquiry whether they are employed in the ſervice of his enemy, the right being ſubject, in almoſt all caſes of an inquiry wrongfully purſued, to a compenſation in coſts and damages. With profeſſed pirates there is no ſtate of peace. They are the enemies of every country, and at all times; and therefore are univerſally ſubject to the extreme rights of war. An ancient authority, the laws of *Oleron*, compoſed at the time of the Cruſades, and, as ſuppoſed, by an eminent leader in thoſe expeditions, our own *Rich.* I. repreſents *infidels* as equally ſubject to thoſe rights, but this reſts partly upon the ground of notions long ago exploded, that ſuch perſons could have no fellowſhip, no peaceful communion with the Faithful; and ſtill more upon the ground of fact that they were for many centuries

Laws of Oleron Section 45.

engaged in real hoſtilities with the Chriſtian States. Another exploded practice was that of princes granting private letters of marque againſt the ſubjects of powers in amity by whom they had been injured without being able to obtain redreſs from the ſovereign or tribunals of that country. But at preſent, under the law, as now generally underſtood and practiſed, no nation can exerciſe a right of viſitation and ſearch upon the common and unappropriated parts of the ſea, ſave only on the belligerent claim. If it be aſked why the right of ſearch does not exiſt in time of peace as well as in war, the anſwer is prompt; that it has not the ſame foundation on which alone it is tolerated in war—the neceſſities of ſelf-defence. They introduced it in war; and practice has eſtabliſhed it. No ſuch neceſſities have introduced it in time of peace, and no ſuch practice has eſtabliſhed it. It is true, that wild claims (alluded to in the argument) have been occaſionally ſet up by nations, particularly thoſe of *Spain* and *Portugal*, in the *Eaſt* and *Weſt Indian* ſeas: but theſe are claims of a nature quite foreign to the preſent queſtion, being claims not of a general right of viſitation and ſearch upon the high ſeas unappropriated, but extravagant claims to the appropriation of particular ſeas, founded upon ſome grants of a pretended authority, or upon ſome ancient excluſive uſurpation. Upon a principle much more juſt in itſelf and more temperately applied, maritime States have claimed a right of viſitation and inquiry within thoſe parts of the ocean adjoining to their ſhores, which the common courteſy of nations has for their common convenience allowed to be conſidered

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as parts of their dominions for various domeſtic purpoſes, and particularly for fiſcal or defenſive regulations more immediately affecting their ſafety and welfare. Such are our hovering laws, which within certain limited diſtances, more or leſs moderately aſſigned, ſubject foreign veſſels to ſuch examination. This has nothing in common with a right of viſitation and ſearch upon the unappropriated parts of the ocean. A recent *Swediſh* claim of examination on the high ſeas, though confined to foreign ſhips *bound to Swediſh ports*, and accompanied in a manner not very conſiſtent or intelligible, with a diſclaimer of all right of viſitation, was reſiſted by our Government as unlawful, and was finally withdrawn.

The right of viſitation being in this preſent caſe exerciſed in time of peace, the queſtion ariſes, how is it be legaliſed? And looking to what I have deſcribed as the known exiſting law of nations evidenced by all authority and all practice, it muſt be upon the ground that the captured veſſel is to be taken *legally* as a pirate, or elſe ſome new ground is to be aſſumed on which this right which has been diſtinctly admitted not to exiſt generally in time of peace, can be ſupported. Wherever it has exiſted, it has exiſted upon the ground of repelling injury, and as a meaſure of ſelf-defence. No practice that exiſts in the world carries it farther.

It is perfectly clear, that this veſſel cannot be deemed a pirate from any want of a national character legally obtained. She is the property not of ſea rovers, but of *French*, acknowledged domiciled ſubjects. She has a *French* paſs, *French* regiſter,

and all proper documents, and is an acknowledged portion of the mercantile marine of that country. If, therefore, the character of a pirate can be impreſſed upon her, it muſt be only on the ground of her occupation as a ſlave-trader; no other act of piracy being imputed. The queſtion then comes to this:—Can the occupation of this *French* veſſel be legally deemed a piracy, inferring, as it muſt do, if it be ſo, all the pains and penalties of piracy? I muſt remember, that in diſcuſſing this queſtion, I muſt conſider it, not according to any private moral apprehenſions of my own (if I entertained them ever ſo ſincerely), but as *the law* conſiders it: and, looking at the queſtion in that direction, I think it requires no labour of proof to ſhew that ſuch an occupation cannot be deemed a legal piracy. The very ſtatute lately paſſed which makes it a tranſportable offence in any *Britiſh* ſubject to be concerned in this trade, affords a deciſive proof that it was not liable to be conſidered as a piracy, and a capital offence, as it would be in foreigners as well as *Britiſh* ſubjects, if it was a piracy at all. In truth it wants ſome of the diſtinguiſhing features of that offence. It is not the act of freebooters, enemies of the human race, renouncing every country, and ravaging every country in its coaſts and veſſels indiſcriminately, and thereby creating an univerſal terror and alarm; but of perſons confining their tranſactions (reprehenſible as they may be) to particular countries, without exciting the ſlighteſt apprehenſion in others. It is not the act of perſons inſulting and aſſaulting coaſts and veſſels againſt the

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will of the Governments and the courſe of their laws, but of perſons reſorting thither to carry on *a traffic* (as it is there moſt unfortunately deemed), not only recogniſed but invited by the inſtitutions and adminiſtrations of thoſe barbarous communities. But it is unneceſſary to purſue this topic further. It has not been contended in argument, that the common caſe of dealing in ſlaves could be deemed a piracy in law. In all the fervor of opinion which the agitation of all queſtions relating to this practice has excited in the minds of many intelligent perſons in this country, no attempt has ever been thought of, at leaſt with any viſible effect, to ſubmit any ſuch queſtion to the judgment of the law by ſuch a proſecution of any form inſtituted in any Court: and no lawyer, I preſume, could be found hardy enough to maintain, that an indictment for piracy could be ſupported by the mere evidence of a trading in ſlaves. Be the malignity of the practice what it may, it is not that of *piracy*, in legal conſideration.

Piracy being excluded, the Court has to look for ſome new and peculiar ground: but in the firſt place a new and very extenſive ground is offered to it by the ſuggeſtion, which has been ſtrongly preſſed, that this trade, if not the crime of piracy, is nevertheleſs *crime*, and that every nation, and indeed every individual has not only a right, but a duty, to prevent in every place the commiſſion of crime. It is a ſphere of duty ſufficiently large that is thus opened out to communities and to their members. But to eſtabliſh the conſequence required, it is firſt neceſ-

neceſſary to eſtabliſh that the right to interpoſe by force to prevent the commiſſion of crime, commences not upon the commencement of the overt act, nor upon the evident approach toward it; but on the bare ſurmiſe grounded on the mere poſſibility; for unleſs it goes that length it will not ſupport the right of forcible inquiry and ſearch. What are the proximate circumſtances which confer on you the right of intruding yourſelf into a foreign ſhip, over which you have no authority whatever, or of demanding the ſubmiſſion of its crew to your inquiry whether they mean to deal in the traffic of ſlaves, not in your country but in one with which you have no connexion? Where is the law that has defined thoſe circumſtances and created that right under their exiſtence? Secondly, it muſt be ſhewn that the act imputed to the parties is unqueſtionably and legally criminal by the univerſal law of nations; for the right of ſearch claimed makes no diſtinctions, and in truth can make none; for till the ſhip is ſearched it cannot be known whether ſhe is a Slave-trader or not, and whether ſhe belongs to a nation which admits the act to be criminal, or to one which maintains it to be ſimply commercial—and I ſay *legally* criminal, becauſe neither this Court nor any other can carry its private apprehenſions, independent of law, into its public judgements on the quality of actions. It muſt conform to the judgement of the law upon that ſubject; and acting as a Court in the adminiſtration of law, it cannot attribute criminality to an act where the law imputes none. It muſt look to the legal ſtandard of morality; and upon a queſtion

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of this nature, That ſtandard muſt be found in the Law of Nations as fixed and evidenced by general and ancient and admitted practice, by treaties and by the general tenour of the laws and ordinances and the formal tranſactions of civilized States; and looking to thoſe authorities, I find a difficulty in maintaining that the traffic is legally criminal.

Let me not be miſunderſtood, or miſrepreſented, as a profeſſed apologiſt for this practice, when I ſtate facts which no man can deny—that perſonal ſlavery ariſing out of forcible captivity is coeval with the earlieſt periods of the hiſtory of mankind—that it is found exiſting (and as far as appears without animadverſion) in the earlieſt and moſt authentic records of the human race—that it is recognized by the codes of the moſt poliſhed nations of antiquity—that under the light of chriſtianity itſelf, the poſſeſſion of perſons ſo acquired has been in every civiliſed country inveſted with the character of property, and ſecured as ſuch by all the protections of law—that ſolemn treaties have been framed and national monopolies eagerly ſought, to facilitate and extend the commerce in this aſſerted property—and all this, with all the ſanctions of law, public and municipal, and without any oppoſition, except the proteſts of a few private moraliſts, little heard, and leſs attended to, in every country, till within theſe very few years, in this particular country. If the matter reſted here, I fear it would have been deemed a moſt extravagant aſſumption in any Court of the Law of Nations, to pronounce that this practice, the tolerated, the approved, the encouraged ob-

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ject of law, ever ſince man became ſubject to law, was prohibited by that law, and was legally criminal. But the matter does not reſt here. Within theſe few years a conſiderable change of opinion has taken place, particularly in this country. Formal declarations have been made, and laws enacted, in reprobation of this practice; and pains, ably and zealouſly conducted, have been taken to induce other countries to follow the example; but at preſent with inſufficient effect: for there *are* nations which adhere to the practice, under all the encouragement which their own laws can give it. What is the doctrine of our Courts of the Law of Nations relatively to them? Why, that their practice is to be reſpected; that their ſlaves if taken are to be reſtored to them; and if not taken under innocent miſtake, to be reſtored with coſts and damages.—All this, ſurely, upon the ground that ſuch conduct on the part of any State is no departure from the Law of Nations; becauſe, if it were, no ſuch reſpect could be allowed to it, upon an exemption of its own making; for no nation can privilege itſelf to commit a crime againſt the Law of Nations by a mere municipal regulation of its own. And if our underſtanding and adminiſtration of the Law of Nations be, that every nation, independently of treaties, retains a legal right to carry on this traffic, and that the trade carried on under that authority is to be reſpected by all tribunals, foreign as well as domeſtick, it is not eaſy to find any conſiſtent grounds on which to maintain that the traffic, according to our views of that law, is criminal.

Againſt the ſubjects of countries which have iſſued decla-

declarations hoſtile to the trade, the Courts have not unfairly applied the *argumentum ad homines*. At the ſame time, it is impoſſible not to feel (and with concern), that if the real underſtanding of the law, both in this country and others, is to be collected from public acts as well as from public declarations, it will at leaſt be difficult to determine with certainty and preciſion what that underſtanding really is; ſome parts of their ſyſtems looking one way, and ſome another. The notorious fact is, that in the dominions of this country and others, many thouſands of perſons are held as legal property, they and their poſterity, upon no other original title than that which I am now called upon to pronounce a crime—every one of theſe inſtances attended with all the aggravation that appertains to the long continuation of crime, if crime it be; and yet protected by law, with all the ſecurities that can be given to property in its moſt reſpected forms. Recent treaties with Foreign Powers ſtipulate for a permitted continuance of this traffic to them for a courſe of years, and in extenſive diſtricts, and without any limitation of the numbers they may export—that is, according to the argument that has been held, contracts for the commiſſion of crime, without ſtint, throughout thoſe diſtricts, and during thoſe periods of time! In ſuch a ſtate of law and fact, at home and abroad, it is more than difficult to arrive at the concluſion, and for this Court, repreſenting this country, to notify ſuch concluſion to foreign parties, that in its clear and conſiſtent judgement of the Law of Nations upon this traffic, it is a groſs violation of that law.

Much ſtreſs is laid upon a ſolemn declaration of

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very eminent perſons aſſembled in congreſs, whoſe rank, high as it is, is by no means the moſt reſpectable foundation of the weight of their opinion that this traffic is contrary to all religion and morality. Great as the reverence due to ſuch authorities may be, they cannot, I think, be admitted to have the force of overruling the eſtabliſhed courſe of the general Law of Nations. Suppoſe an equal number of foreign perſonages, equal in rank and ſtation, and, if ſuch could be found, in talents, were to declare that the right of ſearch in time of war, as exerciſed on neutrals, was contrary to all reaſon and juſtice, this country, I preſume, would not attribute any ſuch effect to ſuch opinions ſo delivered, even although they were not accompanied, as this declaration is, with any contemporary acts, which evinced that they were conſidered by the parties themſelves rather as ſpeculative opinions than as drawing after them the obligation of a public and practical conformity; for otherwiſe ſome difficulty might occur in reconciling the ſtipulated continuation of this traffic contained in ſome treaties framed at no great diſtance of time, with the deſcription of its nature and quality as repreſented in this declaration.

It is next ſaid that every country has a right to enforce its own navigation laws; and ſo it certainly has, ſo far as it does not interfere with the rights of others. It has a right to ſee that its own veſſels are duly navigated, but it has no right in conſequence to viſit and ſearch all the apparent veſſels of other countries on the high ſeas, in order to inſtitute an inquiry whether they are not in truth *Britiſh* veſſels violating *Britiſh* laws. No ſuch right has ever been *claimed, nor* can it be exerciſed without the op-

preſſion of interrupting and haraſſing the real and lawful navigation of other countries; for the right of ſearch when it exiſts at all, is univerſal, and will extend to veſſels of all countries, whether they tolerate the Slave-trade or not; and whether the veſſels are employed in Slave-trading or in any other traffic. It is no objection to ſay that *Britiſh* ſhips may thus by diſguiſe elude the obligations of *Britiſh* law. The anſwer of the foreigner is ready, that you have no right to provide againſt that inconvenience by impoſing a burthen upon his navigation. If even the queſtion were reduced to this, that either all *Britiſh* ſhips might fraudulently eſcape, or all foreign ſhips be injuriouſly haraſſed, *Great Britain* could not claim the option to embrace the latter branch of the alternative. When you complain that the regulation cannot be enforced without the exerciſe of ſuch a right, the anſwer again is, that you ought not to make regulations which you cannot enforce without treſpaſſing on the rights of others. If it were a matter by which your own ſafety was affected, the neceſſities of ſelf-defence would fully juſtify; but in a matter in which your own ſafety is in no degree concerned, you have no right to prevent a ſuſpected injuſtice towards another, by committing an actual injuſtice of your own.

The next argument is, that the Legiſlature muſt have contemplated the exerciſe of this right in time of peace; otherwiſe they have left the remedy incomplete, and peace in *Europe* will be war in *Africa*. The Legiſlature muſt be underſtood to have contemplated all that was within its power, and no more. It provided for the exiſting occaſion,

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and left to future wiſdom to provide for future times. Nothing can be more clear than that it was ſo underſtood by the *Britiſh* Government; for the project of the Treaty propoſed by *Great Britain* to *France* in 1815, is, "that permiſſion ſhould be re-"ciprocally given by each nation to ſearch and bring "in the ſhips of each other;" and when the permiſſion of neutrals to have their ſhips ſearched is aſked at the commencement of a war, it may then be time enough to admit that the right ſtands on exactly the ſame footing in time of war and in time of peace. The fact turned out to be, that ſuch permiſſion was actually refuſed by *France*, upon the expreſs ground that ſhe would not tolerate any maritime police to be exerciſed on her ſubjects, but by herſelf. Nor can it be matter of juſt ſurprize or reſentment, that That people ſhould be willing to retain, what every independent nation muſt be averſe to part with, the excluſive right of executing their own laws.

It is preſſed as a difficulty, what is to be done, if a *French* ſhip laden with ſlaves for a *French* port is brought in? I anſwer, without heſitation, reſtore the poſſeſſion which has been unlawfully diveſted:—reſcind the illegal act done by your own ſubject: and leave the foreigner to the juſtice of his own country. What evil follows? If the laws of *France* do not prohibit, you admit that condemnation cannot take place in a *Britiſh* Court. But if the law of *France* be what you contend, what would have followed upon its arrival at *Martinique*, the port whither it was bound? That all the penalties of the *French* law would have been immediately thundered it. If your caſe be true, there will be no failure

of

of juſtice. Why is the *Britiſh* judge to intrude himſelf *in ſubſidium juris*, when every thing requiſite will be performed in the *French* Court, in a legal and effectual manner? Why is the *Britiſh* judge, profeſſing, as he does, to apply the *French* law, to aſſume cognizance for the mere purpoſe of directing that the penalties ſhall go to the *Britiſh* Crown and its ſubjects, which that law has appropriated to the *French* Crown and its ſubjects, thereby combining, in one act of this uſurped authority, an aggreſſion upon *French* property as well as upon *French* juriſdiction?

It is ſaid, and with juſt concern, that if not permitted in time of peace it will be extremely difficult to ſuppreſs the traffic. It will be ſo: and no man can deny, that the ſuppreſſion, however deſirable, and however ſought, is attended with enormous difficulties; difficulties which have baffled the moſt zealous endeavours for many years. To every man it muſt have been evident that without a general and ſincere concurrence of all the maritime States, in the principle and in the proper modes of purſuing it, comparatively but little of poſitive good could be acquired; ſo far at leaſt, as the intereſts of the victims of this commerce were concerned in it; and to every man who looks to the rival claims of theſe States, to their eſtabliſhed habits of trade, to their real or pretended wants, to their different modes of thinking, and to their real mode of acting upon this particular ſubject, it muſt be equally evident that ſuch a concurrence was matter of very difficult attainment. But the difficulty of the attainment will not legaliſe meaſures that are otherwiſe illegal. To preſs forward to a great

great principle by breaking through every other great principle that ſtands in the way of its eſtabliſhment, to force the way to the liberation of *Africa* by trampling on the independence of other States in *Europe*, in ſhort to procure an eminent good by means that are unlawful, is as little conſonant to private morality as to public juſtice. Obtain the concurrence of other nations, if you can, by application, by remonſtrance, by example, by every peaceable inſtrument which man can employ to attract the conſent of man. But a nation is not juſtified in aſſuming rights that do not belong to her, merely becauſe ſhe means to apply them to a laudable purpoſe; nor in ſetting out upon a moral cruſade of converting other nations by acts of unlawful force. Nor is it to be argued, that becauſe other nations approve the ultimate purpoſe, they muſt therefore ſubmit to every meaſure which any one State or its ſubjects may inconſiderately adopt for its attainment. In this very caſe nothing can be clearer than that the only *French* law produced is in direct contradiction to ſuch a notion; becauſe approving as it does (though to a very limited extent) the abolition, it nevertheleſs reſerves to its own authorities the cognizance of each cauſe and the appropriation of the penalties.

If I felt it neceſſary to preſs the conſideration further, it would be by ſtating the gigantic miſchiefs which ſuch a claim is likely to produce. It is no ſecret, particularly in this place, that the right of ſearch in time of war, though unqueſtionable, is not ſubmitted to without complaints loud and bitter, in ſpite of all the modifications that can be applied to it.

If

If this right of war is imported into peace by convention, it will be for the prudence of States to regulate by that convention the exerciſe of the right with all the ſoftenings of which it is capable. Treaties, however, it muſt be remembered, are periſhable things, and their obligations are diſſipated by the firſt hoſtility. The covenants, however ſolemn, for the abolition of the trade, or for the exerciſe of modes of prevention, co-exiſt only with the relations of amity amongſt the confederate States. At the ſame time it may be hoped, that ſo long as the treaties do exiſt, and their obligations are ſincerely and reciprocally reſpected, the exerciſe of a right, which *pro tanto* converts a ſtate of peace into a ſtate of war, may be ſo conducted as not to excite juſt irritation. But if it be aſſumed by force, and left at large to operate reciprocally upon the ſhips of every State (for it muſt be a right of All againſt All), without any other limits as to time, place, or mode of inquiry than ſuch as the prudence of particular States, or their individual ſubjects, may impoſe, I leave the tragedy contained in this caſe to illuſtrate the effects that are likely to ariſe in the very firſt ſtages of the proceſs, without adding to the account what muſt be conſidered as a moſt awful part of it, the perpetual irritation and the univerſal hoſtility which are likely to enſue.

Let it however be taken for the preſent, that the whole of theſe premiſes tending to ſhew that no right of ſearch upon the high ſeas exiſts in time of peace are either unſound in themſelves or are ſtrained to produce a concluſion that is ſo. I proceed to inquire how far the *French* law had actually aboliſhed

the Slave-trade at the time this adventure occurred; having already obſerved that if it were not, the ſentence of condemnation was admitted to be unmaintainable, and that no proof whatever of any *French* law was produced in the Court below either by the exhibition of the law itſelf or by the information received from foreign profeſſors and practiſers of that law, or by any thing elſe than the mere aſſertion of the proſecutor in the libel. What proof is offered is brought in upon the appeal, and the queſtion depends on its ſufficiency.

The actual ſtate of the matter, as I collect it from theſe documents, is this:—On the 27th of
(H.) *July* 1815, the *Britiſh* Miniſter at *Paris* writes a note to Prince *Talleyrand*, then miniſter to the King of *France*, encloſing a protocol of the 15th conference, and expreſſing a deſire, on the part of his Court, to be informed, whether, under the law of *France* as it then ſtood, it was prohibited to *French* ſubjects to carry on the Slave-trade. The *French*
(I.) Miniſter informs him in anſwer, on the 30th of *July*, that the law of the Uſurper on that ſubject was *null and void* (as were all his decrees); but that his Moſt Chriſtian Majeſty had iſſued *directions*, that on the part of *France* "the traffic ſhould ceaſe from the preſent "time every where and for ever." In what form theſe directions were iſſued, or to whom addreſſed, does not appear; but upon ſuch authority it muſt be preſumed that they were actually iſſued. It is, however, no violation of the reſpect due to that authority to inquire what was the reſult or effect of thoſe directions ſo given. What followed in obedience to them

them in any public and binding form? And I fear I am compelled to ſay that nothing of the kind followed, and that the directions muſt have ſlept in the portfolio of the Office to which they were addreſſed; for it is, I think, impoſſible, that if any public and authoritative ordinance had followed, it could have eſcaped the ſleepleſs attention of many perſons in our own country to all public foreign proceedings upon this intereſting ſubject. Still leſs would it have eſcaped the notice of the *Britiſh* reſident Miniſter, who at the diſtance of a year and a half is compelled on the part of his own Court to expreſs a curioſity to know what laws, ordinances, inſtructions, and other public and oſtenſible acts had paſſed for the abolition of the Slave-trade.

On the 30th of *November* in the ſame year, the additional article of the Definitive Treaty, a very ſolemn inſtrument moſt undoubtedly, is formally and publicly executed, and it is in theſe terms:—" The " high contracting parties, ſincerely deſiring to give " effect to the meaſures on which they deliberated at " the congreſs of *Vienna*, for the complete and uni- " verſal abolition of the Slave-trade, and having each " in their reſpective dominions prohibited, without " reſtriction, their colonies and ſubjects, from taking " any part whatever in this traffic, engage to renew, " conjointly, their efforts, with a view to enſure final " ſucceſs to the principles which they proclaimed in " the declaration of the 8th *February* 1815, and to " concert, without loſs of time, by their Miniſter at " the Court of *London*, the moſt effectual meaſures " for the entire and definitive abolition of a traffic App. (N.)

" ſo odious and ſo highly reproved by the laws of " religion and nature."

Now what are the effects of this Treaty? According to the view I take of it, they are two, and two only; one, declaratory of a fact, the other, promiſſory of future meaſures. It is to be obſerved that the Treaty itſelf does not aboliſh the Slave-trade, it does not inform the ſubjects that that trade is *hereby* aboliſhed, and that by virtue of the prohibitions *therein* contained, its ſubjects ſhall not in future carry on that trade; but the contracting Powers mutually inform each other of the fact, that they *have* in their reſpective dominions aboliſhed the Slave-trade, without ſtating at all the mode in which that abolition had taken place. It next engages to take future meaſures for the univerſal abolition. That with reſpect to both the declaratory and promiſſory parts, *Great Britain* has acted with the *optima fides* is known to the whole world, which has witneſſed its domeſtic laws as well as its foreign negociations.

I am very far from intimating that the Government of this country did not act with perfect propriety in accepting the aſſurance that the *French* Government had actually aboliſhed the Slave-trade, as a ſufficient proof of the fact; but the fact is now denied by a perſon who has a right to deny it; for though a *French* ſubject, he is not bound to acknowledge the exiſtence of any law that has not publicly appeared, and the other party having taken upon himſelf the burden of proving it in the courſe of a legal enquiry, the Court is compelled to demand and expect the ordinary evidence of ſuch a diſputed fact.

It

It was not till the 15th of *January* in the preſent year that the *Britiſh* reſident Miniſter applies for the communication I have deſcribed, of all laws, inſtructions, ordonnances, and ſo on; he receives in return, what is delivered by the *French* Miniſter as *the* ordonnance, bearing date only one week before the requeſted communication, namely, the 8th of *January*. It has been aſſerted in argument, that no ſuch ordonnance has yet up to this very hour even appeared in any printed or public form, however much it might import both *French* ſubjects and the ſubjects of foreign States ſo to receive it: how that fact may be I cannot ſay; but I obſerve it appears before me in a manuſcript form, and by enquiry at the Secretary of State's Office I find it exiſts there in no other plight or condition. App. (P.) App. (R.)

In tranſmitting this to the *Britiſh* Government the *Britiſh* Miniſter obſerves, it is not the document he had reaſon to expect, and certainly with much propriety; for how does the document anſwer his requiſition? His requiſition is for all laws, ordonnances, inſtructions, and ſo forth. How does this, a ſimple ordonnance, profeſſing to have paſſed only a week before, realiſe the aſſurance given on the 30th of *July* 1815, that the traffic "ſhould ceaſe from the preſent "time every where and for ever?" or how does this realiſe the promiſe made in *November*, that meaſures ſhould be taken without loſs of time to prohibit not only *French* colonies but *French* ſubjects likewiſe from taking any part whatever in this traffic? What is this regulation in ſubſtance? Why it is a mere proſpective colonial regulation, prohibiting the importa-

tion of ſlaves into the *French* colonies from the 8th of *January* 1817? Conſiſtently with this declaration, even if it does exiſt in the form and with the force of a law, *French* ſubjects may be yet the common carriers of ſlaves to any foreign ſettlement that will admit them, and may devote their capital and their induſtry unmoleſted by law, to the ſupply of any ſuch markets.

Suppoſing, however, the regulations to contain the fulleſt and moſt entire fulfilment of the engagement of *France*, both in time and in ſubſtance, what poſſible application can a proſpective regulation of *January* 1817 have to a tranſaction of *March* in 1816?

The Counſel, fully ſenſible of the difficulty, have been obliged to reſort, firſt, to the conduct of the maſter, whoſe ſtudious concealment of his tranſactions argues, as they contend, his conſciouſneſs of their illegality. That from the fervour which the agitation of ſuch queſtions had excited, any thing and every thing might be feared in that quarter of the globe is not at all extraordinary; but the concealment of the maſter, if even much greater than it is, would not, under thoſe apprehenſions, or indeed under any apprehenſions, prove the exiſtence of a law that did not exiſt. They are next driven to the ſuppoſition of intermediate edicts, though the *French* Miniſter has not thought fit to produce them. I muſt obſerve, firſt, that the prohibition of the introduction of ſlaves into her colonies would be the firſt ſtep that would be taken, or, as they expreſs it, the *initiative* of any courſe of regulations; and, ſecondly, that nobody is now to be told that a modern edict

which

which does not appear, cannot be preſumed; and that no penal law of any State can bind the conduct of its ſubjects, unleſs it is conveyed to their attention in a way which excludes the poſſibility of honeſt ignorance. Surely, there is no caſe in which the maxim, that what does not appear is to be treated in the ſame way as if it did not exiſt, more fully and forcibly applies than one in which they have been demanded by the perſon who had a right to demand them, and have been withheld by thoſe who had a duty to produce them. The very production of a law profeſſing to be enacted in the beginning of 1817, is a ſatisfactory proof that no ſuch law exiſted in 1816, the year of this tranſaction.

It would be going further than the neceſſities of the preſent caſe require me to do, to ſay that the evidence now offered does not enable me to aſſert that the *French* law prohibited its ſubjects *from taking any part whatever in this traffic*. It is enough to ſay, that no law is ſhewn, which can have any bearing upon this tranſaction. The Uſurper's law was *dead born;* and if any law exiſted at the time of this tranſaction, it muſt be that which permitted the traffic for five years; for the authority of that law could not be deſtroyed by the uſurpation: but, whether it had exiſtence or not, the ſeizor has entirely failed in the taſk he has undertaken of proving the exiſtence of a prohibitory law, enacted by the legal government, which can be applied to the preſent tranſaction, and therefore upon that ground, as well as upon the other, I think myſelf called upon to reverſe thisjudgement.

Upon the matter of coſts and damages that have

been prayed, I muſt obſerve that it is the firſt caſe of the kind, and that the queſtion itſelf is *primæ impreſſionis*, and that upon both grounds it is not the inclination of the Court to inflict ſuch a cenſure. If a ſecond caſe ſhould occur, it will require, (in my judgment till corrected), and undoubtedly ſhall receive, a different conſideration.

APPENDIX.

APPENDIX (A.)

EXTRACT from the Definitive Treaty of Peace between Great Britain and France; ſigned at Paris the 30th of May 1814.

Additional Article.

1ſt.—His Moſt Chriſtian Majeſty, concurring without reſerve in the ſentiments of His Britannic Majeſty, with reſpect to a deſcription of traffic repugnant to the principles of natural juſtice and of the enlightened age in which we live, engages to unite all His efforts to thoſe of His Britannic Majeſty, at the approaching Congreſs, to induce all the powers of Chriſtendom to decree the abolition of the Slave Trade, ſo that the ſaid trade ſhall ceaſe univerſally, as it ſhall ceaſe definitively, under any circumſtances, on the part of the French Government, in the courſe of five years; and that during the ſaid period no ſlave merchant ſhall import or ſell ſlaves, except in the colonies of the State of which he is a ſubject.

APPENDIX (B.)

Extract of a Letter from Lord Caſtlereagh to the Duke of Wellington; dated Foreign Office, Auguſt 6th, 1814.

A ſecond regulation, highly important to prevail on France to accede to, is, a reciprocal permiſſion to our reſpective cruiſers, within certain latitudes, to viſit the merchant ſhips of the other power, and, if found with Slaves on board, in contravention of the law of their particular State, to carry or ſend them in for adjudication. To ſoften the exerciſe of this power, perhaps it might be expedient to require the ſentence of condemnation to be paſſed in the Courts of Admiralty of the country to which the ſhip detained belongs; the proceeds, if condemned, being divided between the captors and the State. Some power of this nature, within the tract of the Slave Trade, is of the firſt importance.

APPENDIX (C.)

Extract of a Letter from the Duke of Wellington to the Prince of Benevento; dated Paris, Auguſt 26th 1814.

IT would be deſirable, ſecondly, that the ſhips of war of both nations ſhould, within the northern tropic, and as far to the weſtward as longitude twenty-five from Greenwich, have the permiſſion to viſit the merchant ſhips of both, and to carry or ſend in for adjudication thoſe found with Slaves on board, in contravention of the law of the State to which they ſhould belong. It would be expedient to arrange that the adjudication ſhould take place in the Courts of the Admiralty of the Country to which they belong, and that the proceeds, if the veſſel ſhould be condemned, ſhould be divided between the Captors and the State.

APPENDIX (D.)

Extract of a Letter from the Duke of Wellington to Lord Caſtlereagh; dated Paris, November 5th 1814.

My Lord,

HAVING had an opportunity of talking with the Miniſter of Marine laſt night, regarding the meaſures to be adopted to carry into execution the King's orders for preventing the Slave Trade on the north-weſt coaſt of Africa, I diſcovered that that propoſed in my note of the 26th of Augnſt, addreſſed to the Prince of Benevente, viz. *The reciprocal ſearch, by ſhips of war of both nations, of veſſels trading on the coaſts, was ſo diſagreeable to the Government, and I had ſeen in different publications that it was likely to be ſo much ſo to the nation, that there was no chance in ſucceeding in getting it adopted,* and therefore I prepared the memorandum, of which I encloſe the copy, to be ſubmitted to the Miniſter, at a meeting which I was to have with him this day.

APPENDIX (E.)

Extract from the Protocol of the ſecond ſpecial Conference relative to the Abolition of the Slave Trade. Vienna, January 28th, 1815.

LORD Caſtlereagh ayant dit dans le cours de ces explications, que l'abolition de la Traité fûr toutes les côtes au Nord de l'Equateur, étoit ſurtout déſirable, comme fourniſſant les moyens les plus ſimples et les plus sûrs pour mettre un terme à tout traffic illegal et fraudulent, et pour exercer la Police contre les Batimens qui ſe preteroient à un pareil traffic, M. le Prince Talleyrand a prié Lord Caſtlereagh de déterminer le ſens de cette derniere expreſſion. Lord Caſtlereagh a repondu qu'il entendoit par cette Police celle que tout Gouvernement exerçoit en vertu de ſa propre Souveraineté, ou de ſes Traités particuliers avec d'autres Puiſſances.

M. le Prince Talleyrand, et M. le Comte Palmella ont dit, *qu'ils n'admettoient en-fait de police maritime que celle que chaque Puiſſance exerce ſur ſes propres Batimens.*

APPENDIX (F.)

Declaration.

Vienna, Feb. 8th, 1815.

The Plenipotentiaries of the Powers who ſigned the Treaty of Paris, the 30th May 1814, aſſembled in Congreſs:

HAVING taken into conſideration, that the traffic known under the name of the *African Slave Trade* has been regarded, by juſt and enlightened men of all ages, *as repugnant to the principles of humanity and of univerſal morality;* that the particular circumſtances to which this traffic owes its origin, and the difficulty of abruply interrupting its progreſs, have to a certain degree leſſened the odium of continuing it; but that at laſt the public voice in all civilized countries has demanded that it ſhould be ſuppreſſed as ſoon as poſſible; that ſince the character and the details of this traffic have been better known, and the evils of every ſort which accompanied it completely unveiled, ſeveral European Governments have reſolved to ſuppreſs it, and that ſucceſſively all Powers poſſeſſing colonies in different parts of the world have acknowledged,

ledged, either by legiſlative acts or by treaties and other forma engagements, the obligation and neceſſity of aboliſhing it; that by a ſeparate article of the laſt treaty of Paris, Great Britain and France engaged to unite their efforts at the Congreſs at Vienna to engage all the Powers in Chriſtendom to pronounce the univerſal and definitive abolition of the Slave Trade; that the Plenipotentiaries aſſembled at this Congreſs cannot better honour their miſſion, fulfil their duty, and manifeſt the principles which guide their auguſt Sovereigns, than by labouring to realize this engagement, and by proclaiming in the name of their Sovereigns the deſire to put an end to a ſcourge which has ſo long deſolated Africa, degraded Europe, and afflicted humanity:—

The ſaid Plenipotentiaries have agreed to open their deliberations as to the means of accompliſhing ſo ſalutary an object, by a ſolemn declaration of the principles which have guided them in this work.

Fully authorized to ſuch an act by the unanimous adherence of their reſpective Courts to the principle announced in the ſaid ſeparate article of the Treaty of Paris, they in conſequence declare in the face of Europe, that, looking upon the univerſal abolition of the Slave Trade as a meaſure particularly worthy of their attention, conformable to the ſpirit of the age, and to the generous principles of their auguſt Sovereigns, they are animated with a ſincere deſire to concur, by every means in their power, in the moſt prompt and effectual execution of this meaſure, and to act in the employment of thoſe means with all the zeal and all the perſeverance which ſo great and good a cauſe merits.

Too well informed of the ſentiments of their Sovereigns not to foreſee, that, however honourable may be their object, they would not purſue it without a juſt regard to the intereſts, the habits, and even the prejudices of their ſubjects; the ſaid Plenipotentiaries at the ſame time acknowledge, that the general declaration ſhould not prejudge the period which each particular Power ſhould look upon as the moſt expedient for the definitive abolition of the traffic in Slaves. Conſequently the determination of the period when this traffic ought univerſally to ceaſe, will be an object of negotiation between the different Powers; it being however well underſtood that no means proper to enſure and accelerate its progreſs ſhould be neglected—and that the reciprocal engagements contracted by the preſent declaration between the Sovereigns who have taken part in it, ſhould not be conſidered as fulfilled until the moment when complete ſucceſs ſhall have crowned their united efforts.

In making this declaration known to Europe, and to all the civilized

civilized nations of the earth, the ſaid Plenipotentiaries flatter themſelves they ſhall engage all other Governments, and particularly thoſe who, in aboliſhing the Traffic in Slaves, have already manifeſted the ſame ſentiments, to ſupport them with their ſuffrage in a cauſe, of which the final triumph will be one of the greateſt monuments of the age which undertook it, and which ſhall have glorioufly carried it into complete effect.

APPENDIX (G.)

Tranſlation.

NAPOLEON Emperor of the French,

We have decreed and do decree as follows:

Art. 1ſt. From the date of the publication of the preſent Decree, the Slave Trade is aboliſhed. There ſhall not be permitted any expedition for this Trade, either in the ports of France, or thoſe of Our Colonies.

2d. There ſhall not be introduced, for the purpoſe of ſale in Our Colonies, any Negro, the produce of this Trade, whether French or Foreign.

3d. The breach of this Decree ſhall be puniſhed by the Confiſcation of the Veſſel and Cargo, to be pronounced by *Our Courts and Tribunals.*

4th. Nevertheleſs, the Perſons who, before the publication of the preſent Decree, ſhall have fitted out and diſpatched veſſels for this Trade, ſhall be at liberty to ſell their cargoes in Our Colonies.

5th. Our Miniſters are charged with the execution of the preſent Decree.

By the Emperor. (Signed) NAPOLEON.

The Miniſter Secretary of State,
(Signed) The Duke of BASSANO.

March, 1815.

APPENDIX (H.)

Note from Viſcount Caſtlereagh to Prince Talleyrand, dated Paris, 27th July 1815.

Prince, Paris, July 27th, 1815.

THE official order to the Admiralty, which I had the honour of tranſmitting to Your Highneſs on the 25th, having ſuſpended hoſtilities againſt the coaſt of France, and againſt French Ships carrying the White Flag, I have been directed by my Court, without delay, to call your attention to the neceſſity of guarding, under theſe circumſtances, againſt any poſſible revival of the Slave Trade.

The Britiſh Government conceive, that under the operation of the law of France, as it now ſtands, it is ſtrictly prohibited to French ſubjects to carry on a traffic in ſlaves, and that nothing but a ſpecific ordinance could again revive that commerce; but whether this be the true conſtruction, or not, of the ſtate of the law in a technical ſenſe, they feel perſuaded that His Moſt Chriſtian Majeſty will never lend His authority to revive a ſyſtem of this nature, which has been *de facto* aboliſhed.

I have deſired Sir Charles Stuart to communicate to your Highneſs what paſſed on this ſubject at Ghent; the aſſurance that the King was at that time pleaſed to give to the Britiſh Ambaſſador, entirely tranquillized the Prince Regent's Miniſters on this ſubject; but now that His Majeſty has been happily reſtored to His throne, they are moſt anxious to be enabled at once to relieve the ſolicitude of the Britiſh nation, by declaring that the King, relieved, by the ſtate in which the meaſure now ſtands, from thoſe conſiderations of reſerve which before influenced his conduct, does not heſitate to conſider that queſtion as for ever cloſed, in conformity with thoſe benevolent principles which are at all times congenial with the natural feelings of His Majeſty's breaſt.

I have the honour to be, &c. &c.

(Signed) CASTLEREAGH.

His Excellency Prince Talleyrand,
&c. &c.

APPENDIX I.

Note from Prince Talleyrand to Lord Caſtlereagh, dated Paris, 30th July 1815.

Tranſlation.

My Lord, Paris, July 30th, 1815.

I HAVE the honour to acquaint your Excellency that the King, in conſequence of the converſation he has had with Sir Charles Stuart, and of the letter which your Excellency did me the honour to write to me on the 27th inſtant, *has iſſued directions in order that, on the part of France, the traffic in ſlaves may ceaſe from the preſent time every where and for ever.*

What had been done in this reſpect by the Uſurper was in the firſt place NULL AND VOID, AS WERE ALL HIS DECREES; and moreover had been evidently dictated to him by perſonal motives of intereſt, and by hopes which he never would have conceived, had he been capable of appreciating the Britiſh Government and People. It had not therefore, and could not have, any weight with His Majeſty.

But it was with regret that laſt year His Majeſty ſtipulated the continuance of the traffic for a few years; He had only done ſo, becauſe on the one hand he was aware that on this point there exiſted in France prejudices which it was at that time adviſable to ſooth, and that on the other hand it was not poſſible to aſcertain with preciſion what length of time it would require to remove them.

Since that period theſe prejudices have been attacked in ſeveral publications, and with ſueh effect as to afford His Majeſty, this day, the ſatisfaction of following without reſerve the dictates of His inclination; the more ſo, ſince it has been proved by inquiries made with the greateſt care, that the proſperity of the French colonies not being compromiſed by the immediate abolition of the Trade, the ſaid abolition is not contrary to the intereſts of His Majeſty's ſubjects—intereſts which above all His Majeſty thought himſelf bound to conſult; this ſatisfaction is increaſed by the idea that His Majeſty at the ſame time does what is agreeable to the government and people of Great Britain.

Accept, my Lord, the aſſurance, &c.

(Signed) The PRINCE DE TALLEYRAND.

His Excellency

Lord Viſcount Caſtlereagh.

APPENDIX (K.)

Note from Lord Caſtlereagh to Prince Talleyrand, dated Paris, July 31ſt, 1815.

Paris, July 31ſt, 1815.

THE underſigned, His Britanic Majeſty's Principal Secretary of State for Foreign Affairs, has the honour to acknowledge Prince Talleyrand's note of this date, conveying to him *the deciſion taken by His Moſt Chriſtian Majeſty, finally to aboliſh the Slave Trade* throughout the French dominions. The underſigned will loſe not a moment in tranſmitting this communication to his Court, and he ventures in the mean time to aſſure His Highneſs, that the King could not have taken any determination more perſonally grateful to the Prince Regent, and to the whole Britiſh nation.

The underſigned requeſts, &c.

His Highneſs the Prince Talleyrand, &c. &c. (Signed) CASTLEREAGH.

APPENDIX (L.)

Diſpatch from Viſcount Caſtlereagh to the Earl of Liverpool.

My Lord, Paris, July 27th, 1815.

I HAVE the honour to encloſe to you an extract of a protocol of the 15th conference held between the Miniſters of the Four Allied Powers. I likewiſe tranſmit to your Lordſhip a note, which, in conſequence of what paſſed at the 15th conference, I have addreſſed to Prince Talleyrand, on the ſubject of the Slave Trade.

APPENDIX (M.)

Firſt Encloſure.

Extract of the Protocol of the 15th Conference.

VISCOUNT Caſtlereagh, His Britannic Majeſty's Principal Secretary of State, &c. in reference to the communication he has made to the Conference of the orders addreſſed to the Admiralty to ſuſpend all hoſtilities againſt the coaſt of France, obſerves, that there

there is reaſon to foreſee that French ſhip-owners might be induced to renew the Slave Trade, under the ſuppoſition of the peremptory and total abolition decreed by Napoleon Buonaparte having ceaſed with his power: that nevertheleſs great and powerful conſiderations ariſing from motives of humanity, and even of regard for the King's authority, require that no time ſhould be loſt to maintain in France the entire and immediate abolition of the traffic in Slaves: that if at the time of the treaty of Paris the King's Adminiſtration could wiſh a final but gradual ſtop ſhould be put to this trade in the ſpace of five years, for the purpoſe of affording the King the gratification of having conſulted as much as poſſible the intereſts of the French proprietors in the colonies,; now that the abſolute prohibition has been ordained, the queſtion aſſumes entirely a different ſhape, for if the King were entirely to revoke the ſaid prohibition, He would give Himſelf the diſadvantage of authorizing in the interior of France the reproach which more than once has been thrown out againſt His former government, of countenancing re-actions, and at the ſame time of juſtifying out of France, and particularly in England, the belief of a ſyſtematic oppoſition to liberal ideas: that accordingly the time ſeems to have arrived when the Allies cannot heſitate formally to give weight in France to the immediate and entire prohibition of the Slave Trade; a prohibition, the neceſſity of which has been acknowledged in principle in the tranſactions of the Congreſs at Vienna.

The other members of the Conference entirely coincide in opinion with Viſcount Caſtlereagh; and in order to attain this end in the manner moſt advantageous to the authority and conſideration of the King, it is agreed, that it would be adviſable to preface by a few obſervations the verbal communication to be made to the King and to His Adminiſtration, in order that His Majeſty may be induced voluntarily to make the arrangement in queſtion, and thus reap the advantage of an initiative, which will remove the idea in the interior of the kingdom of a tendency towards re-action, and will conciliate to the King in foreign countries the ſuffrages of the partizans of liberal ideas.

A confidential repreſentation is to be made to the King accordingly.

APPENDIX (N.)

Article additionnel,

Au Traité definitif, ſigné à Paris le vingt Novembre 1815.

LES Hautes Puiſſances contractantes deſirant ſincerement de donner ſuite aux méſures dont elles ſe ſont occupées au congrès de Vienne rélativement à l'abolition complette et univerſelle de la Traité des Negres d'Affrique, et ayant déjà chacune dans ſes états défendu ſans reſtriction à leurs colonies et ſujets toute parte quelconque à ce trafic, s'engageant réunir de nouveau leurs efforts pour aſſurer le ſuccès final des principes qu'elles ont proclamés dans la déclaration du huit Fevrier mil huit cent quinze ; et à concerter ſans perte de tems, par leurs Miniſtres aux Cours de Londres et de Paris, les méſures le plus efficaces pour obtenir l'abolition entière et definitive d'un commerce auſſi odieux et auſſi hautement reprové par les lois de la religion et de la nature.

Le preſent article additionnel aura la même force et valeur que s'il etoit inféré mot à mot au Traité de ce jour ; il ſera compris dans la ratification du dit Traité.

En foi de quoi les Plenipotentiaires reſpectifs l'ont ſigné, et y ont appoſé le cachet de leurs armes.

Fait a Paris le vingt Novembre, l'an de grace mil huit cent quinze.

(Signé) (Signé)
(L.S.) CASTLEREAGH. RICHELIEU.
(L.S.) WELLINGTON.

APPENDIX (O.)

My Lord, Paris, 30th January 1817.

IN compliance with the inſtructions contained in your Lordſhip's letter, marked No. 5. I have preſented the accompanying note to the Duke de Richelieu, urging his Excellency to communicate to me *the official publications of the French Government*, which enact the final abolition of the Slave Trade.

After ſome delay I have received in anſwer the note I have the honour to tranſmit, which, though *it does not contain the documents I had reaſon to expect*, is accompanied by a decree, publiſhed the 8th January of the preſent year, which appears perfectly to meet the objects of the ſtipulations between the Governments.

I have the honour to be, &c.

(Signed) CHs STUART.

APPENDIX (P.)

Sir, Paris, 15th January 1817.

With a view to guide the inſtructions the Britiſh Government find it neceſſary to tranſmit to the Officers in the King's ſervice in the Colonies of the Weſt Indies, I venture to requeſt that your Excellency will communicate to me ſuch copies of laws, ordinances, inſtructions, and other public or oſtenſible acts of His Moſt Chriſtian Majeſty and of the French LegiſlativeAuthorities, for the abolition of the Slave Trade, which may appear to be neceſſary for that purpoſe.

I have, &c.

The Duke de Richelieu. (Signed) CHᵉ STUART.

APPENDIX (Q.)

Monſieur l'Ambaſſadeur,

J'ai l'honneur d'addreſſer ci-joint à votre Excellence une copie de l'ordonnance du Roi qui prononce la confiſcation de tout Batiment qui tenterait d'introduire dans une des Colonies Françaiſes des Noirs de Traité, et qui interdit de tout commandement le Capitaine Français qui ſe permettrait une pareille contravention. Votre Gouvernement reconnaitra dans ces diſpoſitions de Sa Majeſté la ferme reſolution de maintenir l'execution des Traités dans toutes leurs etendues, et de punir quiconque y porterait atteinte.

J'ai l'honneur, &c.

Paris, le 27 Janvier 1817. (Signé) RICHELIEU.

S. E. M. le Chevalier Stuart.

APPENDIX (R.)

Department de la Marine et des Colonies.

Ordonnance du Roi.

LOUIS, par la grace de Dieu, Roi de France et de Navarre: Voulant pourvoir au cas où il ſeroit contravenu à nos ordres concernant l'abolition de la Traité des Noirs:

Sur le rapport de notre Miniſtre Secretaire d'Etat de la Marine et des Colonies,

Nous avons ordonné et ordonnons ce que ſuit:

APPENDIX.

Article I.

Tout Batiment qui tenteroit d'introduire *dans une de nos Colonies* des Noirs de Traité, ſoit François ſoit Etranger, ſera confiſqué, et le Capitaine, s'il eſt François, interdit de tout commandement.

Sera egalement confiſquée, en pareil cas, toute la partie de la cargaiſon qui ne conſiſteroit pas en Eſclaves : à l'egard des Noirs, ils ſeront employés dans la Colonie aux travaux d'utilité publique.

Article II.

Les contraventions prevues dans l'article précedent ſeront jugeés dans la même forme que les contraventions aux lois et réglemens concernant le commerce étranger.

Quant aux Produits des confiſcations prononcées en conformité du même article, ils ſeront acquis et appliqués de la même manière que ſont les produits des confiſcations prononcées en nature de contravention aux lois ſur le commerce étranger.

Article III.

Notre Miniſtre Sécrétaire d'Etat de la Marine et des Colonies eſt chargé de l'execution de la preſente Ordonnance.

Donné a Paris, en notre Château des Tuilieries, le 8 Jour de Janvier, de l'an de grace 1817, et de notre Regne le 22d.

(Signé) LOUIS.

Par le Roi,

(Signé) LE V^te^ DE BOUCHAGE.

Pour Copie conforme,

Le Miniſtre Sécrétaire d'Etat de la Marine et des Colonies,

(Signé) LE V^te^ DE BOUCHAGE.

Pour ampliation,

Le Miniſtre Sécrétaire d'Etat de la Marine et des Colonies,

(Signé) LE V^te^ DE BOUCHAGE.

APPENDIX (S.)

By his Excellency Charles M'Carthy, Governor of the Colony of Sierra Leone and its Dependencies.

To Mr. Robert Hagan, Commander of His Majeſty's Colonial Schooner, Queen Charlotte.

BY virtue of the power and authority veſted in us by an act paſſed in the fifty-firſt year of the reign of His preſent Majeſty, intituled, *An Act for the Abolition of the Slave Trade,* I do hereby depute and authorize you *to ſeize and proſecute* all ſhips and veſſels, Slaves or Natives of Africa, carried, conveyed, or dealt with as Slaves; and all Goods and Effects whatſoever that ſhall or may become forfeited for any offence committed againſt the ſaid act, or any other act of parliament paſſed for the abolition of the Slave Trade, and which ſhall be found upon or near to the coaſt of Africa, or in any ports, havens, or rivers thereof, or within the limits of any of the colonies, ſettlements, forts, or factories thereof.

Given under my hand and ſeal, at Sierra Leone, this 28th Day of January 1816.

(Signed) CHA^{s} M'CARTHY.

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